

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65
)	

To: The Secretary, Federal Communications Commission

Attn: Managing Director

**COMMENTS OF CRITICAL MESSAGING
ASSOCIATION ON NOTICE OF PROPOSED RULEMAKING**

THE CRITICAL MESSAGING ASSOCIATION (CMA),¹ by its attorney, respectfully submits its comments to the Federal Communications Commission in the captioned proceeding, in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM/FNPRM”), FCC 13-74, released May 23, 2013 and published at 78 Fed. Reg. 34612 (June 10, 2013). In summary, CMA will not object to the proposal in the NPRM/FNPRM to retain the fee for CMRS Messaging Service at the existing level of \$0.08 per unit for FY 2013. However, it is unfortunate that the Commission has declined the opportunity to adopt a reasonable fee for FY 2013, and CMA strongly urges the Commission to adopt CMA’s proposed revised fee in time for the FY 2014 collection.

As its comments in response to the NPRM/FNPRM, CMA respectfully states:

¹ Formerly the American Association of Paging Carriers.

In this proceeding the Commission states that it seeks to establish the schedule of regulatory fees for FY 2013 so as to recover a minimum of \$339,844,000. (NPRM/FNPRM at ¶5).

The product of a comprehensive review of the regulatory fee framework initiated in 2008,² the NPRM proposes certain changes for 2013 unrelated to the CMRS Messaging fee (NPRM at ¶2), and in the FNPRM proposes other long term changes for FY 2014 and beyond, again unrelated to the CMRS Messaging fee. (NPRM/FNPRM at ¶3).

Additionally, however, the NPRM goes on to summarize the history of the CMRS Messaging fee and inquires whether the Commission should modify the way in which fees are assessed from providers in declining industries, and, if so, how to define a declining industry. (NPRM/FNPRM at ¶¶39-40). The NPRM further states that any proposals adopted on these issues would be implemented in FY 2014. (*Id.* at ¶40). For FY2013, the Commission proposes, without additional elaboration, to maintain the CMRS Messaging fee at its current level of \$0.08 per unit. (*Id.* at Appendix B1/B2).

CMA is the national trade association representing the interests of the critical messaging industry (historically known as the paging industry) throughout the United States. As wireless services have evolved over approximately the last decade, the critical messaging industry has increasingly concentrated on serving the specialized, emergency alerting needs of health care providers, first and second responders, and other customers employing critical, time-sensitive messages using a point-to-point protocol that cannot be duplicated by broadband networks. CMA members include a representative cross-section of carriers operating messaging networks licensed by the Commission under Parts 22, 24 and 90 of its rules, as well as equipment suppliers

² *Assessment and Collection of Regulatory Fees for Fiscal 2008 (Further Notice of Proposed Rulemaking)*, MD Docket No. 08-65, FCC 08-182, released August 8, 2008 and published at 73 Fed. Reg. 50285 (August 26, 2008).

and other vendors to the carrier industry. The services provided by CMA's carrier members are classified as CMRS Messaging services for purposes of the Commission's regulatory fees.

With respect to the NPRM's proposal to maintain the CMRS Messaging fee at \$0.08 per unit, CMA will not object to the proposal, notwithstanding that it is disappointing that the Commission has deferred action on revisions to the CMRS Messaging fee until FY 2014. CMA would respectfully remind the Commission that in FY 2002, when it increased the CMRS Messaging fee from \$0.05 per unit to \$0.08 per unit over the objection of the paging industry, then Commissioner Copps pointed out in his concurring statement:

[T]he Commission does not address when or how it would adjust regulatory fees to take into account *changes to the cost of regulating various services*. The paging industry argues that it faces a 60 percent per unit increase in regulatory fees this year due to a declining subscriber base, notwithstanding *reduced regulatory resources devoted to paging*. Today's order . . . fails to address the underlying concern about revisions to the Commission's methodology. I take some comfort, however, that the Commission plans to have in place a new accounting system in the near future³

In 2003 the Commission decided to maintain the CMRS Messaging fee at the FY 2002 level based on "unique circumstances" applicable to the paging industry,⁴ noting that "The Commission is completing design work on a new cost accounting system. As part of this process, we are evaluating methodologies for capturing data relevant to the regulatory fee setting process."⁵

The CMRS Messaging fee has not been changed since FY 2002; and the "unique circumstances" applicable to the critical messaging industry in 2003 still prevail. Under these circumstances, CMA will not object to maintaining the CMRS Messaging fee at the existing level

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2002 (Report and Order)*, 17 FCC Rcd 13202 (FCC 2002) (concurring statement of Commissioner Copps). (Emphasis added).

⁴ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003 (Report and Order)*, 18 FCC Rcd 15985, 15992 at ¶¶21-22 (FCC 2003).

⁵ *Id.* at ¶21 & n. 31.

for FY2013, with the understanding that the Commission will in fact take action to revise the fee for FY 2014.

Insofar as revisions for FY 2014 are concerned, CMA respectfully submits that that focus of the NPRM on trying to define declining industries is misplaced and should be dropped from the Commission's analysis. The pertinent point is that the formula for revising the CMRS Messaging fee prior to FY 2003 yielded an inequitable and eccentric result, as applied to the paging industry, that needed to be fixed. In this regard, the fundamental impetus for a change, *i.e.*, that the existing methodology yielded an inequitable and eccentric result, in fact is no different in principle than the impetus for changes to the fees assessed against certain other industries or facilities, such as submarine cables, ITSPs and Multiyear Wireless Services, where applicable of the historic formula was unfair.

Regardless of the underlying reason, it is the inequity or the eccentricity of the result that mandates the revision. That is the issue on which CMA believes the Commission should focus, and not on attempts to characterize in general terms the underlying causes of the inequity.

In the case of the critical messaging/paging industry, CMA submits that the primary driver for change is the fact that the Commission's cost of regulating the industry has essentially disappeared over the last decade due to the Commission's *de facto* deregulation of the industry. For that reason the costs recovered from the industry in the form of regulatory fees likewise should be at least drastically reduced, if not eliminated altogether.

Typical of the substantive rulemakings affecting the critical messaging/paging industry in recent years are the "bill shock"⁶ and "cramming"⁷ proposals. To the extent they were directed at the wireless industry, they were directed at practices in the wireless telephony industry and not

⁶ *Empowering Consumers to Avoid Bill Shock*, CG Docket No. 10.207.

⁷ *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket No. 11-116.

to critical messaging or paging. By contrast, most of the interaction by critical messaging and paging providers with the Commission is in the context of licensing proceedings, either auction or frequency assignment applications. All of those proceedings have their separate fee schedules and revenue streams, which are unrelated to regulatory fees.

In short, while the decline in subscriber numbers is no doubt relevant and important to achieving sound revisions in the fee formula that should be adopted, the material driving consideration for revising the fee formula to begin with is that the old methodology yields an unjustifiable result under the relevant statutory principles.

CMA agrees with what appears to be the Commission's unstated premise that the amount of revenue derived from the CMRS Messaging fee does not justify the analysis required to obtain a more granular allocation of work units for purposes of determining a fair allocation of regulatory costs. As an alternative, CMA urges the Commission to make a much simpler and more readily justifiable revision as suggested by CMA (then AAPC) in 2008. At that time, in response to the Commission's request for proposed revisions, AAPC suggested that the Commission base the CMRS Messaging fee on the ratio of critical messaging/paging monthly ARPU to wireless telephony ARPU. A copy of AAPC's comments at that time is attached hereto and incorporated herein by reference.

Adopting AAPC's suggestion would have resulted in a CMRS Messaging fee of \$0.025 per unit in service, rather than the current \$0.08 per unit, based upon a 1 to 7 ratio and a \$0.17 per unit CMRS Mobile/Cellular Services. The CMRS Mobile/Cellular Services fee under the current allocation methodology will remain unchanged at \$0.17 per unit for FY 2013 (NPRM/FNPRM at Appendix B1), and it would continue be appropriate to utilize the same 1 to 7 ratio in order to result in a CMRS Messaging fee of \$0.025 per unit. Moreover, the Commis-

sion likewise should take the opportunity to adopt a *de minimis* exemption from the CMRS Messaging fee of \$50.00 in recognition of administrative burden of assessing the fee on many very small companies. (See NPRM at ¶40).

Respectfully submitted,

CRITICAL MESSAGING ASSOCIATION

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June 19, 2013

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees)	MD Docket No. 08-65
for Fiscal Year 2008)	RM No. 11312
)	

To: The Commission, *en banc*

**COMMENTS OF
AMERICAN ASSOCIATION OF PAGING CARRIERS
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

THE AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments to the Federal Communications Commission in the captioned proceeding, in response to the Further Notice of Proposed Rulemaking (the "FNPR"), FCC 08-182, released August 8, 2008, and published at 73 Fed. Reg. 50285 (August 26, 2008).

As its comments in response to the FNPR, AAPC respectfully states:

Summary of Position

In the absence of more complete available data, the messaging fee applicable to paging carriers should be no higher than approximately one-seventh of the fee applicable to broadband cellular and PCS carriers, which is the approximate ratio of the average revenue derived per subscriber by cellular/PCS carriers compared to paging carriers. Therefore, assuming the cellular/PCS regulatory fee is maintained at its current \$0.17 per unit, the messaging fee applicable to paging carriers should be reduced to \$0.025 per unit.

Comments on FNPR

In this phase of the proceeding, the Commission seeks to explore more equitable and reasonable approaches to assessing regulatory fees. The Commission has acknowledged that the

methodology it has used since 1994 to allocate fees among different groups of fee payers may require updating because of important changes in the communications marketplace, such as the growth of new services that did not exist in 1994 or reductions in market share experienced by some industries since 1994. The Commission seeks comments on ways to improve its regulatory fee process for all categories of service, and inquires whether regulatory fees can be better aligned with its regulatory activities; whether it should continue to assess fees based on the allocation used for 2008 or should revert to an earlier allocation; or whether an entirely different allocation method should be adopted. The Commission also inquires about possible methodologies for re-calculating the regulatory fee allocation.

AAPC is the national trade association representing the interests of paging carriers throughout the United States. AAPC's members include a majority of the paging operators with nationwide licenses under Parts 22, 24 and 90 of the Commission's rules; a representative cross-section of operators of regional and local paging systems licensed by the Commission; as well as equipment suppliers and other vendors to the carrier industry. AAPC has urged the Commission for the past several years to re-examine the regulatory fee applicable to paging carriers, and thus welcomes the opportunity to respond to the FNPR.

As AAPC has repeatedly noted in its comments over the years, regulatory fees are supposed to be determined in accordance with the principles set forth in Section 9 of the Communications Act, 47 U.S.C. §159.¹ In FY 2002, when the Commission increased the CMRS Messaging fee from \$0.05 per unit to \$0.08 per unit over the objection of the paging industry, Commissioner Copps pointed out in his concurring statement:

¹ Section 9(b)(1) requires the Commission to "determin[e] the full-time equivalent number of employees performing [fee-recoverable] activities . . . , adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities".

[T]he Commission does not address when or how it would adjust regulatory fees to take into account changes to the cost of regulating various services. The paging industry argues that it faces a 60 percent per unit increase in regulatory fees this year due to a declining subscriber base, notwithstanding reduced regulatory resources devoted to paging. Today's order . . . fails to address the underlying concern about revisions to the Commission's methodology. I take some comfort, however, that the Commission plans to have in place a new accounting system in the near future²

In 2003 the Commission decided to maintain the CMRS Messaging fee at the FY 2002 level based on "unique circumstances" applicable to the paging industry,³ noting that "The Commission is completing design work on a new cost accounting system. As part of this process, we are evaluating methodologies for capturing data relevant to the regulatory fee setting process."⁴ To date, however, the Commission has not altered its methodology for annual revisions to the regulatory fee schedule or undertaken a new accounting system to allocate costs among industry segments; but the "unique circumstances" applicable to the paging industry in 2003 continue to prevail. Accordingly, as an interim solution, the Commission has maintained the messaging fee at \$0.08 per unit each year since 2002, despite a declining base of fee-paying messaging units.

The Commission still has not implemented a new accounting system to determine its costs of regulating different industry segments; instead, it has released a limited amount of data showing such statistics as the fee revenue generated by each Bureau and an indirect cost allocation by Bureau. The data do not, however, indicate whether the direct and indirect costs include those costs that properly should be defrayed by application fees, or how the application fee revenue realized by the Commission affects the allocation of regulatory costs within a Bureau. As a result, it is not possible in AAPC's view to undertake a meaningful re-examination of the exist-

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2002 (Report and Order)*, 17 FCC Rcd 13202 (FCC 2002) (concurring statement of Commissioner Copps).

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003 (Report and Order)*, 18 FCC Rcd 15985, 15992 at ¶¶21-22 (FCC 2003).

⁴ *Id.* at ¶21 & n. 31.

ing regulatory fee allocation methodology based upon the cost principles set forth in Section 9; and its comments herein of necessity will be limited to changes that are appropriate and justified within the limits of the data available.

To this end, AAPC does not at this time seek to challenge the rough proportion of regulatory fees derived from the CMRS industry as a whole, but does request that the ratio of the per unit CMRS fees be adjusted to reflect the approximate ratio between the average subscriber revenue derived by (broadband) cellular/PCS carriers and the average subscriber revenue derived by (narrowband) paging carriers. If this is done, as explained below, the messaging fee applicable to paging carriers will be reduced to \$0.025 per unit, assuming that the cellular/PCS fee remains unchanged.

As noted above, the messaging fee applicable to paging carriers currently is \$0.08 per unit, nearly one-half of the \$0.17 per unit applicable to cellular/PCS carriers. However, the average revenue realized by paging carriers is approximately \$8.00 per month,⁵ compared to the average revenue of approximately *seven times* that amount realized by cellular/PCS carriers.⁶ In this regard, AAPC notes that the Commission's regulatory "costs" in recent years have been overwhelmingly incurred on the broadband (cellular/PCS) side of the CMRS industry, considering, *e.g.*, such matters as E-911, wireless number portability, wireless ETC designations, universal service fund distribution matters, intercarrier compensation, AWS-1 and AWS-3 spectrum allocations and other issues which at most have limited applicability to the paging industry and

⁵ *In the Matter of Federal-State Joint Board on Universal Service, et al. (Further Notice of Proposed Rulemaking and Report and Order)*, CC Docket No. 96-45, *et al.*, FCC 02-43, released February 26, 2002 and published at 67 Fed. Reg. 11268 (March 13, 2002), at ¶59 & n. 145. Due to the intense competition within the paging industry and from the cellular/PCS industry, the average revenue per unit realized by paging carriers has changed little since 2002.

⁶ *See, e.g.*, Kristen Beckman, "By the Numbers: Top Ten U.S. Wireless Service Providers," *RCR Wireless News*, June 19, 2008 (reporting monthly Average Revenue Per Unit or "ARPU" ranging from \$77 per month on the high end to \$42.22 per month on the low end, with the five largest carriers all reporting ARPUs in the mid to low-fifty dollar range).

generally do not apply to paging carriers at all. Accordingly, even in the absence of a new cost study on which to base a fee allocation, the Commission properly can and should adjust the fee ratio so that messaging and cellular/PCS fees paid by the CMRS industry each represent approximately the same proportion of the revenues derived per subscriber.

Assuming that the cellular/PCS fee remains unchanged at \$0.17 per unit, this means that the messaging fee should be approximately one-seventh of that amount, which is \$0.024 per unit or approximately 2.5 cents per unit if implemented for 2008.⁷ For the future, the pro rata regulatory fee revenue requirement properly applicable to the CMRS industry should be allocated between a messaging and a cellular/PCS unit using the same 1 to 7 ratio.

Accordingly, for the reasons stated above, the American Association of Paging Carriers respectfully urges the Commission to establish regulatory fees for messaging units at approximately one-seventh the per unit fee applicable to cellular/PCS units and to maintain that ratio when establishing future regulatory fees.

Respectfully submitted,

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CARRIERS

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Its Attorney

⁷ AAPC notes that the fee schedule for 2008 has a built-in “surplus” of \$1.3 million, according to Attachment B to the FNPR. Thus, the relatively small reduction in fee revenues that would result from reducing the messaging fee from \$0.08 to \$0.025 per unit, if implemented in 2008, would not undermine the overall fee structure.